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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,791	10/29/2003	Reinhard Deutsch	41653-197865	6085
26694	7590	05/23/2005	EXAMINER	
VENABLE LLP P.O. BOX 34385 WASHINGTON, DC 20045-9998			PURVIS, SUE A	
			ART UNIT	PAPER NUMBER
			1734	
DATE MAILED: 05/23/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/694,791

Applicant(s)

DEUTSCH ET AL.

Examiner

Sue A. Purvis

Art Unit

1734

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 23-30


Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) _____
13. ☐ Other: _____


Sue A. Purvis
Primary Examiner
Art Unit: 1734

Continuation of 3. NOTE:

Regarding the amendment to claim 23, it will not be entered because it does place the claims in condition for allowance and requires further search and consideration. In particular, applicant amends to say "an assembly station having a collar and a pocket." From the specification the collar (19) is "to form part of a finished hinged lid pack containing an array of smoker's products." (Page 14 of Applicant's Specification.) The pocket (18) is part of the folding device (17) (page 15 of specification) and is a new feature, not considered before by the examiner and certainly not an implicit feature of the previous claim as suggested by the applicant.

Continuation of 11. does NOT place the application in condition for allowance because:

Regarding applicant's arguments, they are centered around the addition of an "assembly station having a collar and a pocket." as stated above, this amendment will not be entered, but the arguments will be addressed as much as possible minus this feature. With respect to the §102(b) rejection over Kronseder (US 5,024,348), applicant's main arguments have to do with the collar and pocket in the newly amended claim. Previous claim 23 included the step "conveys the coupon to a release position where the coupon is placed in a desired position relative to a collar at an assembly station." The collars, as defined in the specification, are transported successively to the assembly station where the blanks are applied thereto or relative thereto. (1st paragraph on Page 15 and the paragraph spanning pages 17 and 18.) Thus the collar is considered to be material worked upon and does impart a structural feature to the apparatus. Applicant fails to set forth any feature in the claim which would further define the collar as being more than just material worked upon. Thus, Kronseder is considered to meet the claim limitations as it has the features of the claim, including a first means to feed labels procured as single items ordered in a stack, which is replaceable, and a transfer plate (47) which picks up labels from the replaceable stack. (See Figure 1.) The alternative language used by the applicant in claim 23, results in the apparatus only needing a first means or second feeding means and a pick-up means. Kronseder has the first feed means and the pick up means as required by the claim.

Regarding applicant's arguments with respect to the §102(b) rejection over Vijuk (US 4,812,195) and Bright (EP 370633), again applicant points to the "collar and pocket" as being features which Vijuk and Bright do not have. As for applicant's arguments suggesting that Bright does not include a universal pickup and application device, the vacuum drum is the universal pickup and application device; it picks up the label and conveys it to the release position where it is placed in a desired position on the article being labeled (relative to a collar as it were), this being the assembly station. As defined in applicant's specification, the blanks or coupons (11) are conveyed from the magazine to the collar (19) or relative to the collar. Again this is considered to be material worked upon, in their arguments, the applicant is attempting to redefine this feature in the claim as being part of the apparatus, but the neither the claim nor the specification supports that contention. Furthermore, applicant's claim does not require the universal pickup and application device position a coupon "on an assembly station" as suggested by the applicant on page 7 of the remarks. This feature is not even in the newly amended claims which are not being entered.

Regarding applicant's contention that the Office Action appears to "ignore" the last three lines of the claim, this is not the case. Bright conveys the label (or coupon) to a release position where the label is placed in a desired position relative to a "collar" at an assembly station. The collar in the claim is the article being labeled, the label in Bright is conveyed to the desired position relative to the article being labeled at the assembly station.

Regarding applicant's arguments with respect to Focke and Voltmer, applicant argues they do not teach "conveying the label to a release position where the label is placed in a desired position relative to a portion of the assembly station, prior to attaching the label to the workpiece." This feature is not in the rejected claim, features from the specification cannot be read into the claim. This may be what the disclosed apparatus does, but applicant has failed to claim this feature.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Purvis whose telephone number is (571) 272-1236. The examiner can normally be reached on Monday through Friday 9am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher A. Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sue A. Purvis
Primary Examiner
Art Unit 1734

May 18, 2005